

**COMMONWEALTH OF VIRGINIA**  
**Department of Environmental Quality**

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**Subject:** Division of Land Protection and Revitalization Guidance Memo No. LPR-SW-2021-01 Director's Determination for New Solid Waste Management Facility Permits and Modifications for Expansions & Increases in Capacity

**To:** Regional Land Protection Program Managers & Solid Waste Permit Writers

**From:** Kathryn J. Perszyk  
Director, Division of Land Protection & Revitalization



**Date:** December 7, 2021

**Copies:** Regional Directors, Deputy Regional Directors, Jeffery Steers

**Summary:**

This guidance was prepared to improve transparency in the Director's determination process, required any time the agency is issuing a solid waste permit for a new solid waste management facility (except Permits-by-Rule), or processing a permit modification for an expansion or increase in capacity of an existing solid waste disposal facility. The requirement for the Director's determination is found at Subsection D of [§ 10.1-1408.1](#) of the Code of Virginia.

**Electronic Copy:**

Once effective, an electronic copy of this guidance will be available on the Virginia Regulatory Town Hall under the Department of Environmental Quality (<http://townhall.virginia.gov/L/GDocs.cfm?boardid=119>)

**Contact Information:**

Please contact the applicable regional solid waste permit writer with any questions regarding the application of this guidance.

**Certification:**

As required by Subsection B of [§ 2.2-4002.1](#) of the APA, the agency certifies that this guidance document conforms to the definition of a guidance document in [§ 2.2-4101](#) of the Code of Virginia.

**Disclaimer:**

*This document is provided as guidance and, as such, sets forth standard operating procedures for the agency. However, it does not mandate any particular method nor does it prohibit any alternative method. If alternative proposals are made, such proposals should be reviewed and accepted or denied based on their technical adequacy and compliance with appropriate laws and regulations.*



## **Director's Determination for New Solid Waste Management Facility Permits and Modifications for Expansions & Increases in Capacity**

### **I. Introduction**

Sanitary landfills and other facilities for the disposal, treatment, or storage of nonhazardous solid waste must apply for permits in accordance with the Virginia Waste Management Act (Chapter 14 of Title 10.1 of the Code of Virginia) and the Virginia Solid Waste Management Regulations ("VSWMR") (9 VAC 20-81). In addition to outlining permit application requirements, the act and regulations charge DEQ with certain procedural requirements for review and approval of such applications. After each review, DEQ will provide written comments, if necessary, to the applicant requesting additional information. If the applicant does not submit complete information or there are technical concerns that are not addressed during the review process, DEQ will follow requisite permit denial procedures.

If DEQ determines that a permit application is administratively complete, technically adequate, and in conformance with the act and regulations, the DEQ will develop a draft permit and follow required public participation procedures. Following the close of the public comment period and consideration of comments, the Director must make a final permit decision.

Final permit decisions for a new solid waste management facility permit or any permit modification allowing a facility expansion or an increase in capacity, requires an additional written determination by the Director assessing six potential impacts from the proposed facility or facility modification.

### **II. Background**

The Virginia Waste Management Act (Title 10.1, Chapter 14) specifies that sanitary landfills or other facilities for the disposal, treatment, or storage of nonhazardous solid waste shall not operate without a permit from the Director. When issuing such permits, or permit modifications that allow an expansion or increase in capacity of an existing facility, the Director must make a determination and hold a public hearing prior to issuance. When the Director's determination requirement was expanded on in the statute effective July 1, 1999, the agency issued revised Waste Procedure #3 providing implementation and guidance on the Director's determination. Following subsequent regulatory amendments to the VSWMR, which incorporated many of the guidance provisions as permit application requirements, as well as development of a Solid Waste Permit Manual, the Waste Procedure became obsolete.

At this time, the statutory requirement is that the Director must determine, *"after an investigation and analysis of the potential human health, environmental, transportation infrastructure, and transportation safety impacts and needs and an evaluation of comments by the host local government, other local governments and interested persons, that (i) the proposed*

*facility, expansion, or increase protects present and future human health and safety and the environment; (ii) there is a need for the additional capacity; (iii) sufficient infrastructure will exist to safely handle the waste flow; (iv) the increase is consistent with locality-imposed or state-imposed daily disposal limits; (v) the public interest will be served by the proposed facility's operation or the expansion or increase in capacity of a facility; and (vi) the proposed solid waste management facility, facility expansion, or additional capacity is consistent with regional and local solid waste management plans developed pursuant to § 10.1-1411.” [§10.1-1408.1 D.1.].*

The above Director’s determination must be made for all solid waste management facilities, except captive nonhazardous industrial landfills which are subject to the determination requirements of § 10.1-1408.1 D.2. The requirement for a Director’s determination does not apply to Permits-by-Rule as outlined in [Land Guidance No. 06-2001](#).

### **III. Authority**

Section [10.1-1408.1](#) of the Code of Virginia specifies that sanitary landfills or other facilities for the disposal, treatment, or storage of nonhazardous solid waste shall not operate without a permit from the Director. This section also identifies key components of the permit application that must be submitted for review, as well as outlining the Director’s determination that shall be made prior to issuing a permit for a new solid waste management facility or permit modification allowing a facility expansion or increase in capacity.

The permit application required by the Code is addressed in Part V of the VSWMR [9 VAC 20-81-450 through 9 VAC 20-81-600]. The permit application for a proposed new solid waste management facility will contain a Notice of Intent (NOI), a Part A Application, and a Part B Application. The NOI provides the initial request for a permit application, as well as transmits required forms. The Part A Application must address the applicable siting requirements of 9 VAC 20-81-120 while the Part B Application must address the applicable design, operation, monitoring, closure, and post-closure care requirements of Part III of the VSWMR [9 VAC 20-81-130 through 260]. Additional information regarding the content of the NOI, Part A, and Part B applications is provided in [Submission Instructions No. 1](#).

### **IV. Definitions**

The definitions in § [10.1-1400](#) of the Code of Virginia and [9 VAC 20-81-10](#) of the VSWMR apply to the implementation of these procedures. Key definitions applicable to this guidance from the VSWMR are identified below. Additional definitions specific to this guidance are also provided.

*Capacity* means the maximum permitted volume of solid waste, inclusive of daily and intermediate cover, that can be disposed in a landfill. This volume is measured in cubic yards. (9 VAC 20-81-10)

*Captive industrial facility* means a nonhazardous industrial solid waste management facility that is owned or operated by the generator of the waste managed at the facility, and that accepts only waste generated by the facility owner or operator.

*Expansion* means a horizontal expansion of the waste management boundary as identified in the Part A application. If a facility's permit was issued prior to the establishment of the Part A process, an expansion is a horizontal expansion of the disposal unit boundary. (9 VAC 20-81-10)

*Host community* means any locality within the jurisdictional boundaries of which siting, construction, or expansion of a solid waste management facility is proposed.

*Part A approval* means the Part A portion of the permit application has been reviewed and deemed administratively complete and technically adequate. The approval acknowledges that the site on which a proposed solid waste management facility will be located is suitable for the intended use. The approval is provided in letter form and outlines any restrictions or limitations on site use or solid waste management facility design and construction to be addressed in Part B of the permit application.

*Permit* means the written permission of the director to own, operate, or construct a solid waste management facility. (9 VAC 20-81-10)

*New solid waste management facility* means a facility or a portion of a facility that was not included in a previous determination of site suitability (Part A approval). (9 VAC 20-81-10)

*Solid waste management facility (SWMF)* means a site used for planned treating, storing, or disposing of solid waste. A facility may consist of several treatment, storage, or disposal units. (9 VAC 20-81-10)

*Solid waste management plan (SWMP)* means a plan submitted by a solid waste planning unit in accordance with the requirements of 9 VAC 20-130.

*Solid waste planning unit (SWPU)* means each region or locality that submits a solid waste management plan. (9 VAC 20-130-10)

*Waste management boundary* means the vertical plane located at the boundary line of the area approved in the Part A application for the disposal of solid waste and storage of leachate. This vertical plane extends down into the uppermost aquifer and is within the facility boundary. (9 VAC 20-81-10)

## **V. Guidance Document**

When issuing a permit for a new solid waste management facility or permit modification for an expansion or increase in capacity, the DEQ has been making a Director's determination in accordance with the Code of Virginia requirement under Subsection D.1. of § 10.1-1408.1, and referencing the determination in the permit introduction. However, to improve transparency in the Director's determination process, this guidance document identifies the types of information considered when making each of the determinations required under D.1. of § 10.1-1408.1 as well as provides an amended permit approval memo template, which is written by permit writers when providing a final permit to the Director for signature and permit issuance.

The statute requires an investigation and analysis of specific items prior to the Director making a determination to issue a permit for a new solid waste management facility, or for any expansion or increase in capacity at an existing facility. The items to be investigated and analyzed are discussed in detail in the sections that follow.

### ***V.A. Applicability***

The Director is required to make a determination pursuant to subsection D of § 10.1-1408.1 for solid waste management facilities, including captive industrial facilities, under the following scenarios:

- When issuing a new solid waste permit, excluding a Permit-by-Rule;
- When issuing a permit modification following a Part A and Part B permit application review for a facility expansion or increase in capacity; and
- When issuing the initial Part B permit for the design of a landfill (or portion of a landfill) located within an approved Part A waste management boundary. The Director's Determination will consider the entire Part A defined WMB and capacity.

The Director's determination for captive industrial facilities pursuant to § 10.1-1408.1 D.2. only requires the "investigation and evaluation of comments by the local government, that the proposed facility poses no substantial present or potential danger to human health or the environment" in addition to holding a public hearing within the county, city or town where the facility is to be located prior to the issuance of any permit.

### ***V.B. Public Participation***

In accordance with 9 VAC 20-81-450.E., if DEQ determines that a permit application is administratively complete, technically adequate, and in conformance with the Waste Management Act and Solid Waste Management Regulations, the DEQ will develop a draft permit and follow required public participation procedures. These procedures include scheduling a public hearing and posting a public notice in a newspaper with general circulation in the area of the facility announcing the availability of the draft permit, dates of the public comment period, and the date, time, and location of a public hearing. The DEQ also posts the notice on its website, the Virginia Town Hall website, and provides notifications to local government contacts of the host community and localities adjacent to the host community. For facilities or permits with high interest, the public participation has also included a DEQ-hosted informational session prior to the public hearing where DEQ staff provide a brief overview of the draft permit and answer questions from the public. Permit documents are also available for the public to review at the DEQ Regional Office, and documents are often made available in a host community public library, local government office, and/or on DEQ's website.

To ensure the fair treatment and meaningful involvement of every person in accordance with the Virginia Environmental Justice Act (Article 12 of Chapter 2 of Title 2.2 of the Code of Virginia, § 2.2-234 and § 2.2-235), DEQ is currently working to improve its public outreach. To notify more of the public of DEQ's public participation opportunities, especially when the proposed facility, expansion, or increase in capacity is within an environmental justice community, fenceline community, or adjacent to or in close proximity to land occupied by state or federal tribes, the DEQ is currently exploring additional notification methods. These include posting

information to various social media platforms and providing direct communication with interested persons or groups in the host community.

Comments received during the public comment period will be considered in the Director's final decision to issue, modify and issue, or deny the permit. All persons who commented during the public participation period will be notified of the final decision in accordance with 9 VAC 20-81-450.E.8. The Director will also consider all comments when preparing the written Director's determination as outlined below.

### ***V.C. Director's Determination pursuant to D.1. of § 10.1-1408.1***

The Director must make the following determinations prior to making a final decision on a permit action for a new landfill or landfill expansion or increase in capacity. Guidance is provided herein to assist DEQ staff with ensuring the permit application contains all required information as well as additional factors for the Director to consider for each of the determinations listed below.

#### **1. Protection of Present and Future Human Health, Safety, and Environment**

Compliance with the standards of the VSWMR, which incorporates the location, design, operation, monitoring, closure and post-closure criteria of Subtitle D of the Resource Conservation and Recovery Act, and applicable solid waste guidance assures that human health and the environment are protected. The purpose of the design of the facility is to prevent the migration of waste and waste byproducts to the land, the surface water, and the groundwater, thus preventing human and environmental contact with waste materials. A review of a solid waste permit application in accordance with established procedures will suffice to meet the above requirement. The guidance set forth in the *Submission Instructions for Solid Waste Permit Applications* (Submission Instructions) addresses this requirement.

#### **2. Need for Additional Capacity**

The expansion or increase in capacity of an existing facility, or the construction of a new facility will only be approved if there is an adequate demonstration of need by the applicant for the increased treatment capacity, disposal capacity or waste handling capacity (for treatment and storage facilities). Previous agency guidance outlined information to be submitted by the applicant to demonstrate need for a new facility or increase in capacity. These recommendations were later incorporated into the VSWMR at 9 VAC 20-81-450.B.8. to assist the Director with making the determination required by § 10.4-1408.1 D.1. In order to demonstrate need, the applicant must submit the information required of 9 VAC 20-81-450.B.8.a. or 8.b. with the Notice of Intent. Note that the demonstration requirements under 8.b. are ONLY applicable to existing sanitary landfills seeking an expansion or increase in capacity.

With respect to B.8.a.(8), a planning period of 20 years will be used to evaluate the need for the proposed facility, expansion, or increase in capacity, consistent with the 20-year planning period required for solid waste planning units (9 VAC 20-130-120). For purposes of this element of the need demonstration, the DEQ may consider whether the proposed new facility, expansion, or increase in capacity is needed so that the host community's solid waste planning unit (SWPU) has at least 20 years of waste management capacity. Additionally, the regional need for capacity

may be considered. The region may include the host community SWPU and neighboring SWPUs outside of the host community, SWPUs within the larger Planning District Commissions/Regional Councils ([map](#)), or geographic region comprising a 75-mile radius of the proposed facility, expansion, or increase in capacity.

### **3. Sufficient Infrastructure**

The Director's determination of sufficient infrastructure refers to transportation infrastructure and DEQ relies, in part, on the Virginia Department of Transportation (VDOT) or other responsible agency to approve the transportation adequacy report submitted with the Part A application. In accordance with § 10.1-1408.4 and 9 VAC 20-81-460.G., the report must address the adequacy of transportation facilities that will be available to serve the landfill, including daily travel routes and traffic volumes that correlate with the daily disposal limit, road congestion, and highway safety. If the proposed service area of the facility includes localities outside the solid waste planning unit (SWPU), applicants should also discuss transportation impacts to the host community and localities along travel routes from long-haul transportation of waste from originating jurisdictions to the proposed facility. In accordance with § 10.1-1408.4, the transportation adequacy report must be considered before approving site suitability for a new sanitary landfill (i.e. the Part A application).

Any conditions of development or recommendations from VDOT, the local government, or other responsible agency regarding transportation infrastructure and transportation safety impacts and needs such as road upgrades may be addressed in the solid waste permit through a schedule of compliance relating permitted operational capacity levels to completion of the scheduled transportation infrastructure upgrades.

At the time of the Director's determination, any new information provided during public participation regarding transportation adequacy or transportation safety concerns may be considered in the final decision.

### **4. Consistency with Locality or State Imposed Daily Disposal Limits**

**Locality-imposed Limits:** The local government certification should be sufficient for a locality to certify that the location and operation of the facility is consistent with all local ordinances. DEQ staff will review such certifications and accompanying host agreement or conditional or special use permits to ensure the draft permit includes any locality imposed disposal limits.

**State-imposed Limits:** At this time, the Waste Management Act does not limit or impose any daily disposal limits for solid waste landfills.

**Permit Limits:** As part of the permit application, the applicant must propose a daily disposal limit and prepare an Operations Manual outlining how the facility will manage waste received in accordance with the landfill operational performance standards of the VSWMR (9 VAC 20-81-140). DEQ staff routinely inspect solid waste disposal facilities to ensure compliance with the landfill operational performance standards, and if violations are observed, DEQ may impose a lower daily disposal limit through compliance and enforcement action or permit modification.

## **5. Public Interest Served**

An applicant for a new facility, or the expansion or increase in capacity of an existing facility, must provide information to demonstrate that the public interest is served by the proposed activity. Previous agency guidance outlined the types of information to be submitted by the applicant to indicate that public interest will be served by the new facility, expansion, or increase in capacity. These recommendations were later incorporated into the VSWMR at 9 VAC 20-81-460.K. to assist the Director with making the determination required by § 10.1-1408.1 D.1. In order to indicate that public interest will be served, the applicant must submit the information required of 9 VAC 20-81-460.K. with the Part A Application.

While 9 VAC 20-81-460.K. allows the applicant to address just one of the listed items to indicate that public interest will be served, applicants will be encouraged to address all items in addition to other factors that may be relevant to the proposed facility, expansion, or increase in capacity. For example, it may be inadequate for an applicant to only provide information regarding costs of waste management (K.1.) to prove public interest will be served by a new landfill, expansion, or increase in capacity when landfilling is at the bottom of the waste management hierarchy (9 VAC 20-81-20). Cost effective waste management would need to be considered in conjunction with how the proposed facility, expansion, or increase in capacity is part of a comprehensive waste management program that includes all elements of the waste management hierarchy (K.3., K.4., and K.5.). Additional indirect and future costs, such as greenhouse gas emissions from vehicle traffic and landfill gas, and long-term monitoring and leachate management should also be factored into the cost information. The applicant should also address how the landfill will serve the public interest of the host community, as all of its residents will need to have access to waste management. For a proposed facility, expansion, or increase in capacity of a facility in an environmental justice or fenceline community, the disposal needs of such communities will need to be served for the life of the facility.

Another consideration for public interest includes the protection of human health, safety, and the environment (K.2. and a repeat of subsection 1 discussed above). In light of public interest, when the siting of a proposed facility, expansion, or increase in capacity meets the required siting criteria of 9 VAC 20-81-120 but encroaches on natural resources such as drinking water sources and wetlands or is in an environmental justice or fenceline community as defined in § 2.2-234, DEQ may request more stringent design standards during the permit application review to ensure the protection of human health, safety, and the environment.

At the time of the Director's determination, any new information provided during public participation regarding the ability of the proposed facility, expansion, or increase in capacity to serve the public interest of the host community should be considered in the final decision.

## **6. Consistency with Regional and Local Solid Waste Management Plans**

In accordance with § 10.1-1408.1 B.9. applications for a new solid waste management facility permit or modification for an expansion or increase in capacity must include certification from the governing body for the host community that the proposed facility, expansion, or increase in capacity is consistent with the approved local or regional solid waste management plan (SWMP) or that the local government or solid waste planning unit has initiated the process to revise the SWMP to include the new or expanded facility. The statute specifies that inclusion of such a

certification (e.g. a signed SW-11-1 local government certification form) is sufficient to allow DEQ to process the permit application, up to but not including publication of the draft permit or permit modification for public comment. The statute further indicates that this certification shall not bind the Director in making the required Director's determination of § 10.1-1408.1 D.1.

Prior to DEQ indicating that an application is technically adequate and in conformance with the VSWMR and preparing the draft permit, DEQ staff will confirm that the host community's SWMP has been amended in accordance with the Solid Waste Planning and Recycling Regulations (9 VAC 20-130). The SWMP amendment shall include the facility name and capacity (or revised capacity) of the proposed sanitary landfill, expansion, or increase in capacity in order to be considered consistent.

Separately, § 10.1-1411 D.2. directs DEQ not to issue a permit for a new sanitary landfill or for an expansion, increase in capacity, or increase in the intake rate of an existing sanitary landfill, until the SWPU within which the facility is located has an approved SWMP in accordance with 9 VAC 20-130.

If the host community SWPU is failing to meet its mandated recycling rate, then the SWPU must prepare a recycling action plan and amend its SWMP in accordance with the Solid Waste Planning and Recycling Regulations (9 VAC 20-130) before the Director can determine consistency. The applicant may need to provide additional information to DEQ during the permit application review or following the public participation period to indicate how the facility can assist the SWPU in meeting its mandated recycling rates.

## **VII. Attachments**

1. Permit Approval Memo